

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Order Approving Contracts to Secure Additional Capacity for System Reliability in SP-15.

Application 05-06-003
(Filed June 2, 2005)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (Rule or Rules),¹ this ruling sets the procedural schedule, assigns the principal hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held on August 2, 2005, before me and the assigned Administrative Law Judge (ALJ).

Procedural Background

As filed by Southern California Edison Company (SCE), this application seeks a Commission decision by December 2005. The Commission categorized this application as a ratesetting proceeding that most likely would require hearings (Res. ALJ 176-3154, June 16, 2005). SCE contemplated we would receive a number of oppositions to the application; we did, and we allowed SCE to reply to them. In addition, prior to the PHC we requested and received multiple PHC

¹ Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

statements and subsequently, on August 19, 2005, we received twelve comments from 13 parties (one a joint filing) on questions the ALJ and I asked at the PHC. A motion to dismiss, filed on August 2 and amended on August 3, 2005, is also pending, together with related responses and replies.

At the PHC I asked for written objections by September 9, 2005 from any party that objected to having me serve as Assigned Commissioner in this proceeding. Though it creates no legal bar, I wanted the parties to know that my former consulting firm had represented one party in other matters in the past. No objections were filed.

Scope of the Proceeding

Brief Summary of the Application

SCE proposes to acquire up to 1,500 MW of capacity through new power purchase agreements (PPAs) with terms of up to ten years to serve additional demand anticipated beginning in the summer of 2006.² SCE relies upon forecasts by the California Energy Resources Conservation and Development Commission (CEC) and California Independent System Operator (CAISO) for the southern California region known as “South of Path-15” (SP-15). The expectation is that these long-term contracts will enable construction of new generation by securing the necessary financing. SCE proposes that all electricity customers in SP-15 bear the costs of the contracts and wants the Federal Energy Regulatory Commission (FERC) to authorize recovery in transmission rates.

² Reportedly, some of this power could be on line by the summer of 2006. SCE admits that the timeline is quite tight, however, and some parties contend it is impossible.

SCE's application asks this Commission to: (1) approve the PPAs, which SCE now expects to submit in this proceeding by November 16, 2005,³ (2) support SCE's efforts at FERC; and (3) if FERC declines to impose a transmission charge, authorize recovery through the Commission-approved rates paid by all customers in the service territories of SCE, as well as San Diego Gas & Electric Company (SDG&E) and Bear Valley Electric Service – whether these customers subscribe to bundled service, Direct Access, or Community Choice Aggregation.

Motion to Dismiss

The Alliance for Retail Energy Markets (AReM) and a group of parties collectively identifying themselves as the CCA Community⁴ filed the motion to dismiss and amended motion to dismiss. They observe that the application is opposed by “[n]early every party in this proceeding who would be directly affected” by it and contend that dismissal is appropriate on both legal and policy grounds.⁵ SDG&E largely supports the motion to dismiss and SCE opposes it. Though the Commission's Office of Ratepayer Advocates (ORA) generally opposes the application, it does not support dismissal.

While I agree that the scope of this proceeding should be narrowed, I cannot conclude as a matter of law or policy that the application must be dismissed. The moving parties have not shown that the Commission lacks

³ As filed, the application anticipated that the PPAs would be submitted to the Commission on October 5, 2005.

⁴ CCA means “Community Choice Aggregation”; the members of the CCA Community comprise the Local Government Commission Coalition, the County of Los Angeles, the City of Chula Vista, the City of Morena Valley, the Inland Valley Development Agency, and the Community Environmental Council.

⁵ Amended Motion, p. 1.

jurisdiction to consider SCE's application. Specifically, Pub. Util. Code §§ 334, 345, and 345.5 do not create exclusive jurisdiction in CAISO over all matters related to public utility electric service reliability. And assuming for the purposes of argument that the application is inconsistent with articulated Commission policy, it is well established that the Commission is free to revise policy following notice and an opportunity to be heard in accordance with Pub. Util. Code § 1708; thus, § 1708 does not bar the application.

The motion to dismiss is denied. As I stated at the PHC, however, I do not intend for this application to supplant the procurement proceeding and the related Commission proceedings now underway. Nor is this application the place to reconsider generic policy determinations which already have been made in the procurement proceeding or to set new, generic policies.

Scope

At the PHC, SCE explained that approximately 1,000 MW of the 1500 megawatt (MW) it seeks to acquire would be allocated to its bundled customers to satisfy its long-term procurement plan (LTPP) in lieu of other, shorter-term resource acquisitions. The Commission approved SCE's LTPP in Decision (D.) 04-12-048:

We find that SCE's LTRP is reasonable, subject to the compliance requirements ... SCE has demonstrated that its primary residual resource need through 2011 is for peaking, dispatchable and shaping resources. SCE has considerable need for peaking and shaping resources, which should be obtained through short, medium- and long-term acquisitions. SCE's strategy of relying primarily on short and mid-term contracts during this planning period is reasonable, *but it may be prudent to add some long-term resources*. SCE is authorized to present such a case to the Commission as an implementation of its LTPP by way of application following a RFP. (D.04-12-048, Ordering Paragraph 5, emphasis added.)

These major milestones in SCE's LTPP implementation effort occurred in April 2005 (Request for Offers launched) and June 2005 (application filed).

Implementation must be considered in the context of existing state policy and so, in delineating the application's appropriate scope, I begin by acknowledging the following premises. First, existing state policy encourages investor-owned utilities (IOUs) to acquire appropriate amounts of new generation (including renewable generation resources) over time to serve their bundled customers. Second, existing state policy does not obligate SCE (or other IOUs) to acquire new generation for other load serving entities, including energy service providers (ESPs). Thus, the focus of this proceeding immediately narrows – and the ultimate questions become:

Should the Commission authorize SCE to enter into long-term contracts for up to 1000 MW to serve its bundled load?

Who should pay the cost of such contracts, especially if the cost is higher than contracts for 1000 MW of existing generation?

A number of issues naturally fall outside this decisional framework and will not be considered in this proceeding. Among the issues excluded are the following: acquisition by SCE of new generation to serve non-SCE loads (e.g., SDG&E loads or ESP loads), including related cost recovery issues; the nature and extent of ESP obligation to enter into contracts for new generation to serve ESP load; and the degree to which SDG&E is or is not fulfilling its Commission-ordered procurement obligation. If SCE or other parties believe that any of these issues should be examined, the procurement proceeding and related proceedings – not this application -- are the appropriate dockets.

I reiterate that I intend hearings on this application to focus on discrete factual matters necessary to permit the Commission to resolve the two ultimate

issues set forth above. Though other issues may arise, at this time the following issues frame the inquiry for hearings:

1. Is implementation of SCE's LTPP through the acquisition of new generation (as opposed to existing generation) to serve its bundled customers reasonable and beneficial to these customers?
2. Do other entities (other LSEs or their customers) receive a benefit from SCE's acquisition of new generation to serve its bundled customers?
3. If so, should other LSEs or their customers pay part of the cost of SCE's acquisition of new generation to serve its bundled customers?
4. Is it correct that approximately 1000 MW of the 1500 MW proposed new generation acquisition is to serve SCE bundled customer load?
5. Is the acquisition of 1000 MW of new generation to serve SCE bundled customer load a reasonable amount of new generation for SCE to acquire at this time?
6. Is there an incremental cost to ratepayers from acquiring new versus existing generation and, if so, is this cost reasonable for SCE ratepayers to pay?
7. With respect to customers who are not part of SCE's bundled load now, should the Commission establish any new cost-responsibility requirements specific to this proposed new generation acquisition?
8. Should SCE receive any incentive payment from its ratepayers for acquiring new generation (rather than existing generation) for its bundled customers?
9. Has SCE's RFP and review and evaluation process complied with D.04-12-048, and in particular, Ordering Paragraphs 26, 27, 28 and 29?

I expect parties to brief legal matters and general policy perspectives, which do not require the development of expert witness testimony tested by cross-examination. Among these issues are the following:

1. Can the Commission require SCE to enter into PPAs for new generation (as opposed to existing generation) without approving the cost recovery SCE requests in its application?
2. If acquisition of new generation warrants a financial incentive for SCE, should the Commission consider that issue and/or set the incentive in this proceeding or elsewhere (e.g., cost of capital proceeding)?

Discovery; Protective Orders

The Commission will not impose a discovery plan on the participants. Any discovery dispute, which they cannot resolve between themselves, after a good faith effort to meet and confer, may be raised by written motion in accordance with Rule 45 and the Commission's Resolution ALJ-164. The Commission generally looks to the Code of Civil Procedure for guidance in resolving discovery disputes.

Requests for adoption of a protective order also may be made by motion, following a good faith effort to reach a consensus on the need for the order and its nature and scope. Motions for a protective order shall include, as an attachment, a copy of the protective order proposed by the parties concerned.

Schedule

The schedule for this proceeding, derived from the parties' proposals and SCE's revised date for filing the PPAs, is as set forth below. The schedule requires SCE to distribute supplemental prepared testimony to address the scope set forth above, to the extent the exhibits submitted with the application do not address it fully (i.e., SCE-1, SCE-2, and SCE-3). SCE should also indicate in its supplemental testimony the portions of its application and exhibits that are no

longer relevant, given the scope set forth in this ruling.

September 26, 2005	SCE supplemental prepared testimony served
October 17, 2005	Intervenor testimony served
October 25, 2005	Rebuttal testimony served
November 1, 2005, 9:00 a.m.— 3:30 p.m., to be continued as necessary through November 4, 2005	Evidentiary Hearing, Commission Courtroom, 505 Van Ness Avenue, State Office Building, San Francisco, CA 94102
November 16, 2005	Signed PPAs submitted ⁶
Date to be determined prior to close of hearing	Concurrent initial briefs & comments on PPAs filed
December 16, 2005	Concurrent reply briefs filed & reply comments on PPAs filed; proceeding submitted
Approx. January 15, 2006	Proposed decision filed (Pub. Util. Code § 311(d))
20 days after proposed decision filed and served	Comments on proposed decision
5 days after comments filed and	Reply comments on proposed decision

⁶ I ask SCE to include a summary table that shows the permitting and construction timelines for the signed PPAs.

In addition to submitting the signed contracts, SCE must show that its Request for Offers (RFO) process complies with D.04-12-048. Considering the ongoing nature of the RFO process, SCE may be able use the supplemental prepared testimony to amend the initial showing submitted as part of the application. The final part of the showing may need to be filed with the signed contracts.

served	
Approx. February 15, 2006 (first Commission meeting 30 days after proposed decision filed)	Proposed decision on Commission agenda for Commission vote

As indicated above, the anticipated submission date is tied to the date parties file concurrent reply briefs. The proposed decision will be filed as soon following submission as the ALJ's workload permits. Because the Commission has not yet set the dates for its public meetings in 2006, the dates for mailing the proposed decision and for Commission action on it are approximate, only. However, I expect the Commission to resolve this proceeding in accordance with the expedited schedule outlined above, which is well within 18 months of issuance of this scoping memo, and therefore in compliance with Pub. Util. Code § 1701.5.

Preparation of Exhibits and Procedures at Evidentiary Hearing

Parties must follow the Commission's Rules, as modified or clarified by the ALJ's directives in Appendix A to this ruling. Procedural questions may be addressed to the ALJ (xjv@cpuc.ca.gov) or the Commission's Public Advisor.

Category of Proceeding and Need for Hearing

This ruling confirms that this is a ratesetting proceeding set for hearings, as preliminarily determined in Resolution ALJ 176-3154.

Assignment of Principal Hearing Officer

ALJ Jean Vieth will be the principal hearing officer.

Ex Parte Rules

Ex parte communications are permitted in ratesetting proceedings subject to the restrictions and reporting requirements in Pub. Util. Code § 1701.3(c), Rule 7, and Rule 7.1.

IT IS RULED that:

1. The motion to dismiss is denied.
2. The scope of the proceeding is as set forth herein.
3. The schedule for this proceeding is set forth herein.
4. The principal hearing officer will be Administrative Law Judge Vieth.
5. This ruling confirms that this proceeding is a ratesetting proceeding set for hearing.
6. Ex parte communications are permitted subject to the restrictions and reporting requirements in Pub. Util. Code § 1701.3(c), Rule 7 and Rule 7.1 of the Commission's Rules of Practice and Procedure.

Dated September 9, 2005, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

APPENDIX A: EXHIBITS

Page 1 of 2

Preparation of Prepared Testimony

See Article 17 of the Commission's Rules of Practice and Procedure for various requirements (Rule 68—need for subject index; Rule 70—exhibit size; etc.). For the purposes of ascertaining whether a subject index is required, include the individual pages of any attachment(s) in the total page count. A subject index should identify all such attachments, as well as the sections/subsections within the prepared testimony. Generally, prepared testimony should be bound with any attachments to it, unless size considerations warrant a different practice. To facilitate reference, please separately tab each attachment to prepared testimony.

Formatting requirements:

- 1) **The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp.** (Rule 70.) This applies to prepared testimony as well as other exhibits—if there is insufficient room in the upper right hand corner for an exhibit stamp, prepare a cover sheet for the exhibit. If a party “premarks” an exhibit in **any** way, it should **not** do so in the upper right hand corner of the cover sheet.
- 2) If any exhibit *provided to the ALJ in the hearing room* consists of more than one page, the **pages should be bound together** or otherwise fixed in a secure fashion (e.g. brads, acco fasteners, velo binding). **Do not use a loose-leaf binder** for this purpose—if dropped, the pages may fall out.

Service of Exhibits

One copy of all prepared testimony should be served on the ALJ, and unless otherwise arranged, on all appearances and state service on the service list, as well as on the Assigned Commissioner's office. Prepared testimony should **not** be filed with the Commission's Docket Office.

Corrections to Exhibits

Minor corrections: only minor corrections to an exhibit may be made orally from the witness stand.

Major corrections: all corrections that are not minor should be made in advance of hearings, in writing, and distributed to the ALJ and other parties in order to provide timely notice.

- 1) Corrections should use “redline” format conventions which permit comparison of the original and revised text (i.e. line out or strikeover the original text being deleted; clearly indicate, in a readily distinguishable manner, the substitute or additional text).

APPENDIX A: EXHIBITS

Page 2 of 2

- 2) Each corrected page should be marked with the word “revised” and the revision date.
- 3) Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. (Example: Exhibit 2-A is the first correction made to Exhibit 2.) Corrections to exhibits with multiple sponsors will also be identified by chapter number. (Example: Exhibit 5-2-B is the second correction made to Chapter 2 of Exhibit 5, where different witnesses sponsor Chapters 1 and 2.)

Identification of Exhibits in the Hearing Room

Number of copies:

- 1) *Prepared testimony*—the sponsoring party should provide **one copy to the ALJ and one to the court reporter**, and have at least five copies available for distribution to parties present in the hearing room.
- 2) *Other exhibits*—the sponsoring party should provide **two copies to the ALJ and one to the court reporter**, and have at least five copies available for distribution to parties present in the hearing room. (This directive supersedes Rule 71.)
- 3) *Confidential exhibits*— at least one of the copies provided to the ALJ must be in an **unsealed envelope** measuring no more than 10” by 13.”

Premarking Exhibit #s: At the discretion of the ALJ, a block of exhibit numbers may be reserved for each party. A party that “premarks” exhibits with numbers generally should plan to use them at hearing in consecutive numerical order, however.

Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness’ counsel before the witness takes the stand on the day the exhibit is to be introduced.

Exception: A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness’ spontaneous reaction.

Confidential documents: If parties have agreed to consult prior to disclosure, as in the case of **confidential documents**, they should do so before using the documents in cross-examination, unless a different procedure regarding confidential documents has been arranged in advance with the ALJ.

APPENDIX A: EXHIBITS
Page 3 of 2

(END OF APPENDIX)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated September 9, 2005, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.